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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 GABE BEAUPERTHUY, et al.,

22 Plaintiffs,

23 v.

24 24 HOUR FITNESS USA, INC., a
25 California corporation dba 24 HOUR
26 FITNESS; SPORT AND FITNESS
27 CLUBS OF AMERICA, INC., a
28 California corporation dba 24 HOUR
FITNESS,

Defendants.

Case No. C 06 0715 SC

*(Assigned to the Honorable Samuel Conti
for All Purposes)*

**CLAIMANTS' NOTICE OF MOTION
AND MOTION FOR AN AWARD OF
ATTORNEYS' FEES, COSTS AND
EXPENSES, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: September 13, 2013

Time: 10:00 am

Courtroom: 1

Complaint filed: February 1, 2006

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that, on Friday September 13, 2013 at 10:00 am,
3 in Courtroom 1 of the above-entitled Court, or as soon as may be heard, Settling
4 Claimants¹ will, and hereby do, move the Court to for an order awarding attorneys'
5 fees in the amount of \$5,479,677, costs and expenses in the amount of \$1,009,469,
6 and settlement administrator expenses in the amount of \$65,000 payable to the
7 settlement administrator, Simpluris.

8 This motion is based on the Settlement Agreement, the Memorandum of
9 Points and Authorities filed herewith and in support of this Motion, the
10 Declarations of Thomas G. Foley, Jr., Justin P. Karczag, and Richard E. Donahoo
11 in support hereof, and all other papers filed in this action.

12
13 Dated: August 9, 2013

DONAHOO & ASSOCIATES
FOLEY BEZEK BEHLE & CURTIS, LLP

14
15 By: /s/ Richard E. Donahoo

16 Thomas G. Foley, Jr.

17 Richard E. Donahoo

18 Justin P. Karczag

19 Attorneys for Claimants
20
21

22 ¹ The term "Settling Claimants" refers to the subset of 849 of the 862 individuals listed in
23 Exhibit A to the Settlement Agreement, who have affirmatively requested be included in the
24 proposed settlement. Note, of 862 eligible Claimants 849 affirmatively executed and returned
25 the Individual Release Agreement, affirmatively expressing their desire to be part of the
26 settlement, *one* person executed a Notice of Rejection, expressing the desire to not take part in
27 the settlement, and 12 provided no response at all, despite substantial follow up efforts by the
28 Claims Administrator and Claimants' counsel. Under the terms of the settlement agreement,
only those who execute and return an Individual Release Agreement participate in it, and only
their claims are resolved by it. The claims of the rejecting claimants and of the nonresponding
claimants remain unaffected. The term "Defendants" or "24 Hour" refers to the Defendants in
the above-entitled action.

TABLE OF CONTENTS

1.	Introduction.	1
2.	Background.	1
3.	Formula for Attorneys' Fees and Costs	5
4.	Additional Facts Pertaining to the Attorneys fees and costs.	6
5.	Argument: The Court Should Grant the Requested Fees and Costs.	8
A.	The Standard – Common Fund	10
(1).	The Results Achieved	10
(2).	The Risks Involved	11
(3).	Skill Required and Quality of the Work Performed	12
(4).	The Contingent Nature of the Representation	12
(5).	Awards Made in Similar Cases	13
(6).	The Relevant Factors Weigh In Favor Of The Award	14
B.	Lodestar Cross-check.	14
(1).	Counsels' Lodestar.	15
(2).	Hours Reasonably Expended.	15
(3).	Reasonable Hourly Rates	16
C.	Lodestar Multiplier	17
D.	Claimants' Request for Costs and Expenses Should Be Granted	19
6.	Conclusion.	20

TABLE OF AUTHORITIES

CASES

Baganha v. Cal. Milk Transp.,

No. 1:01-cv-05729-AWI-LJO, Doc. No. 14714

Benitez, et al. v. Wilbur, et al.,

No. 1:08-cv-01122 LJO GSA, Doc. No. 52 (E.D. Cal., Dec. 15, 2009).....13

Boeing Co. v. Van Gemert,

444 U.S. 472 (1980)8, 9

Bond v. Ferguson Enters.,

2011 U.S. Dist. LEXIS 70390 (E.D. Cal. June 30, 2011).....10, 13, 14, 19

Californians for Disability Rights v. California Dept. of Transp.,

2010 WL 8746910 (N.D. Cal. Dec. 13, 2010)16

Chavez, et al. v. Petrissans,

Case No. 1:08-cv-00122 LJO GSA, Doc. No. 89 (E.D. Cal. Dec. 15, 2009).....13

Clark v. City of Los Angeles,

803 F.2d 987 (9th Cir. 1986).....17

Fernandez v. Vict. Secret Stores, LLC,

2008 U.S. Dist. LEXIS 123546 (C.D. Cal. July 21, 2008)10

Fischel v. Equitable Life Assur. Soc’y of U.S.,

307 F.3d 997 (9th Cir. 2002).....17

Garcia v. Gordon Trucking, Inc.,

2012 U.S. Dist. LEXIS 160052 (E.D. Cal Oct. 13, 2012)10, 13, 16, 19

1	<i>Graham v. Daimler Chrysler Corp.,</i>	
2	34 Cal. 4th 553 (2004).....	13
3	<i>Hanlon v. Chrysler Corp.,</i>	
4	150 F.3d 1011 (9th Cir. 1998).....	8
5	<i>In re Activision Sec. Litig.,</i>	
6	723 F. Supp. 1373 (N.D. Cal. 1989)	9
7	<i>In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.,</i>	
8	109 F.3d 602 (9th Cir.1997).....	18
9	<i>In re Heritage Bond Litig.,</i>	
10	2005 U.S. Dist. LEXIS 13555 (C.D. Cal. June 10, 2005)	12
11	<i>In re HPL Techs., Inc., Secs. Litig.,</i>	
12	366 F. Supp. 2d 912 (N.D. Cal. 2005)	15
13	<i>In re Immune Response Sec. Litig.,</i>	
14	497 F. Supp. 2d 1166 (S.D. Cal. 2007)	15
15	<i>In re Mego Fin. Corp. Sec. Litig.,</i>	
16	213 F.3d 454 (9th Cir. 2000).....	12
17	<i>In re Omnivision Techs., Inc.,</i>	
18	559 F.Supp.2d 1036 (N.D. Cal. 2008)	13, 17
19	<i>In re Portal Software, Inc. Sec. Litig.,</i>	
20	2007 U.S. Dist. LEXIS 88886 (N.D. Cal. Nov. 26, 2007).....	14, 15
21	<i>In re Rite Aid Corp. Sec. Litig.,</i>	
22	396 F.3d 294 (3d Cir. 2005).....	15
23		
24		
25		
26		
27		
28		

1	<i>In re Sumitomo Copper Litig.,</i>	
2	74 F. Supp. 2d 393 (S.D.N.Y. 1999).....	12
3		
4	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.,</i>	
5	19 F.3d 1291 (9th Cir. 1994).....	17
6	<i>Knight v. Red Door Salons, Inc.,</i>	
7	2009 U.S. Dist. LEXIS 11149 (N.D. Cal. Feb. 2, 2009).....	9, 13, 17
8		
9	<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.,</i>	
10	221 F.R.D. 523 (C.D. Cal. 2004)	11
11	<i>Navarro v. Servisair,</i>	
12	2010 U.S. Dist. LEXIS 41081 (N.D. Cal. Apr. 27, 2010)	12
13		
14	<i>Ozga v. U.S. Remodelers, Inc.,</i>	
15	2010 U.S. Dist. LEXIS 91196 (N.D. Cal. Aug. 9, 2010).....	14
16	<i>Powers v. Eichen,</i>	
17	229 F.3d 1249 (9th Cir. 2000).....	9
18		
19	<i>Quesada v. Thomason,</i>	
20	850 F.2d 537 (9th Cir.1988).....	18
21	<i>Randall Willis et al. v. Cal. Western Transp. and Earl Baron et al. v.</i>	
22	<i>Cal Western Transp. (consolidated cases),</i>	
23	No. 1:00-cv-05695-AWI-LJO	14
24		
25	<i>Romero v. Producers Dairy Foods, Inc.,</i>	
26	2007 WL 3492841 (E.D. Cal. 2007)	9, 13
27		
28		

1	<i>Rosenfeld v. U.S. Dept of Justice,</i>	
2	904 F.Supp.2d 988 (N.D. Cal. 2012)	16
3		
4	<i>Six (6) Mexican Workers v. Az. Citrus Growers,</i>	
5	904 F.2d 1301 (9th Cir. 1990).....	10
6	<i>Staton v. Boeing Co.,</i>	
7	327 F.3d at 938 (9th Cir. 2003)	8
8		
9	<i>Van Gerwen v. Guarantee Mut. Life Co.,</i>	
10	214 F.3d 1041 (9th Cir. 2000).....	18
11	<i>Vasquez v. Coast Valley Roofing,</i>	
12	266 F.R.D. 482 (E.D. Cal. 2010).....	13, 19
13		
14	<i>Vasquez v. Jim Aartman, Inc.,</i>	
15	No. 1:02-cv-05624-AWI-LJO, Doc. No. 130	13
16	<i>Vizcaino v. Microsoft Corp.,</i>	
17	290 F.3d 1043 (9th Cir. 2002).....	10, 14, 17, 19
18		
19	<i>Wren v. RGIS Inventory Specialists,</i>	
20	2011 WL 1230826 (N.D. Cal. Apr. 1, 2011)	16
21		
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23		
24		
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MEMORANDUM OF POINTS AND AUTHORITIES

1. Introduction.

By the instant motion, Claimants request the Court award \$5,479,622 in attorneys' fees and \$1,009,469.42 as reimbursable costs pursuant to the agreed upon formula set forth in the Settlement Agreement. Over 98% of the 862 individuals listed in the settlement agreement have signed individual releases to ratify and participate in the settlement. Moreover, the requested formula setting the attorneys' fees and costs as expressed in the settlement agreement (1/3 of the net settlement) mirrors the agreed-upon formula set forth in individual retainer agreements signed by over 95% of the Claimants. Declaration of Thomas G. Foley, Jr. In Support of Motion for an Award of Attorneys' Fees, Costs and Expenses, and Settlement Administrative Costs ("Foley"), ¶23. Claimants' counsel have litigated this case on a contingency basis, taking considerable risk for hundreds of clients, while facing extensive and formidable defense counsel from national employment firms. Foley, ¶24; Declaration of Richard E. Donahoo in Support of Motion for an Award of Attorneys' Fees, Costs, and Expenses, and Settlement Administrative Costs ("Donahoo"), ¶¶14, 44. In addition, Claimants' counsel have expended less than the anticipated \$1,100,000 allowed in the settlement agreement. Foley, ¶9, Donahoo, ¶40.

Despite the extraordinary circumstances and risk involved, Claimants' counsel do not request a multiplier and have agreed to accept as a fee an amount that is less than the total amount of fees calculated at their normal rates. The formula set forth in the settlement agreements equates to an attorney fees award equal to 31.5% of the gross settlement which is within the range of reasonableness for such awards. The extraordinary circumstances of this case justify a fee award equal to 1/3 of the net recovery after deduction of costs.

2. Background.

The Court is well versed in the protracted procedural history of this case. It

1 has been the subject of numerous orders of this Court. After predecessor cases
2 abandoned the claims of employees outside California, on February 1, 2006,
3 certain Claimants filed this case as a putative FLSA collection action on behalf of
4 non-California Managers and Trainers. Donahoo ¶¶28-29); Declaration of Justin
5 P. Karczag in support of Motion for an Award of Attorneys' Fees, Costs, and
6 Expenses, and Settlement Administrative Costs ("Karczag"), ¶2. ECF Doc 1² For
7 the Personal Trainers, Claimants' claims alleged that 24 Hour required them to
8 work off-the-clock performing training sessions and non-training session-related
9 work and that 24 Hour failed to pay overtime. Complaint Doc 1. For Managers,
10 Claimants alleged that 24 Hour misclassified them as exempt employees, and
11 failed to pay them overtime. *Id.*

12 On March 6, 2007, this Court granted conditional certification of a Managers
13 class (Doc 124) and on March 24, 2008, conditionally certified a Personal Trainers
14 class, tolling the claims period for both classes. Doc 190. However, on February
15 24, 2011, this Court decertified both classes. Doc 428. Up to the point of
16 decertification, this action had been actively litigated, including hundreds of docket
17 entries, dozens of depositions taken across the country, hundreds of thousands of
18 documents produced, millions of electronic records produced, discovery orders
19 issued, and two motions for summary judgment heard. Donahoo, ¶29; Karczag,
20 ¶¶4-8.

21 Rather than giving up after decertification, between March 21 and March 24,
22 2011, 983 claimants served individual Demand and Claims for arbitration on 24
23 Hour and submitted the Demands and Claims to JAMS in the Northern District of
24 California. Donahoo, ¶30; Karczag, ¶9-10. 24 Hour refused to arbitrate any
25 arbitrations in the Northern District, claiming that arbitration provisions required
26 arbitration not in the judicial district where the case was filed, but where the
27

28 ² All references to ("Doc") shall be to a document in the ECF court docket in this action.

1 Claimant last worked other than the state of California. *Id.* Claimants filed a
2 motion to compel arbitration in the Northern District. Doc 432. On or about
3 October 14, 2011, Claimants filed an amended motion limiting the motion to be
4 brought on behalf of 16 individuals who were named Plaintiffs in the action. Doc
5 449. On December 2, 2011, this Court granted the motion to compel arbitration in
6 the Northern District. Doc 457.

7 On December 5, 2011 273 Claimants who had the same or substantially
8 similar factual circumstances as the 16 named Claimants who prevailed on the
9 motion to compel filed individual Petitions to Compel Arbitration against 24 Hour
10 in the Northern District of California. Donahoo, ¶31; Karczag, ¶10. On December
11 6, 2011, 24 Hour commenced filing over 307 competing petitions to compel
12 arbitration against its former employees in 21 United States District Courts across
13 the country, including against most, if not all, of the 273 Claimants who filed
14 petitions in the Northern District. *Id.* For the remaining Claimants who had not
15 filed demands to arbitrate in the Northern District of California, additional mass
16 actions were filed in the Northern District seeking to compel arbitration and for
17 declaratory relief. *Id.*

18 In response to 24 Hour's filing of 307 Petitions in 21 different jurisdictions
19 across the country, Claimants filed a motion for temporary restraining order and
20 preliminary injunction, seeking to enjoin 24 Hour's prosecution of the out-of-
21 jurisdiction cases. Donahoo, ¶32; Karczag, ¶11; Doc 463. In addition to opposing
22 Claimants' motions, 24 Hour filed motions to transfer the cases to jurisdictions
23 outside of the Northern District, which Claimants opposed. Doc 488.

24 As a consequence of extensive litigation across the Country, Claimants'
25 counsel: (1) retained local counsel as necessary, (2) became admitted *pro hac vice*
26 in over a dozen jurisdictions, and, (3) to alleviate the additional expense of local
27 counsel, became generally admitted to additional jurisdictions. Donahoo, ¶33;
28 Karczag, ¶10.

1 As a result of the ensuing litigation, on February 22, 2012, this Court
2 appointed Magistrate Judge James Larson (Ret.) as the Special Master. Doc 501.
3 While the Special Master was deciding issues related to injunction and transfer,
4 Claimants spent months litigating 24 Hour's competing petitions that it had filed
5 across the country in 21 different jurisdictions. Donahoo, ¶34; Karczag, ¶¶10-11.

6 On or about May 7, 2012, Special Master Larson issued his report and
7 recommendations, rejecting 24 Hour's arguments that (a) the cases should be
8 transferred, and (b) that arbitration should not proceed in the Northern District of
9 California. Doc 508. The Special Master recommended a staged orderly
10 resolution of all cases, determining that the first 289 arbitrations proceed in the
11 Northern District, with parties proceeding to mediation, and if not successful at
12 mediation, proceeding to resolve the other 700 claimants' demands. Donahoo,
13 ¶35; Karczag, ¶11. 24 Hour objected to the Special Master's Report and
14 Recommendation, and Claimants successfully opposed 24 Hour's objections. Docs
15 520, 525 and 528; Donahoo, ¶35; Karczag, ¶11.

16 Thereafter, the Special Master appointed individual arbitrators for the first
17 16 individual arbitrations. Discovery and motion practice occurred before the
18 individual arbitrators mutually selected by the parties. Donahoo, ¶36. Claimants
19 succeeded in significant procedural battles during those arbitrations, including but
20 not limited to opposing 24 Hour's motions arguing that Claimants should have to
21 pay for the arbitration and Claimants' motions compelling 24 Hour corporate
22 designees to attend depositions. *Id.* In certain arbitrations 24 Hour filed motions
23 for summary judgment, which Claimants successfully opposed. Donahoo, ¶37;
24 Karczag, ¶12. One to two dozen additional depositions were taken subsequent to
25 the Court's Order approving the Special Master's report and recommendation. *Id.*
26 Thereafter, the Special Master recommended the scheduling a second wave of
27 arbitrations, which was approved by this Court over the objection of 24 Hour. *Id.*
28 The Court also denied 24 Hour's Motion to Dismiss. *Id.*

1 After years of protracted procedural battles across the federal court system
2 and the initiation of the arbitration process, 24 Hour agreed to resume settlement
3 discussions.³ Donahoo, ¶ 38; Karczag, ¶13. On October 18, 2012 and November
4 10, 2012, Claimants and Defendant engaged in two further rounds of Mediation
5 with neutral mediator, Mark Rudy, Esq., seeking a resolution of all claims of the
6 remaining Claimants. *Id.* Following the last session, the Mediator sponsored a
7 “Mediator’s compromise” from which counsel worked to refine and negotiate until
8 an agreement was reached and written settlement agreement finalized. Donahoo, ¶
9 39; Karczag, ¶13.

10 **3. Formula for Attorneys’ Fees and Costs**

11 The terms of the proposed settlement are set forth in the Settlement
12 Agreement that was executed by 24 Hour and counsel for the Claimants on
13 February 14, 2013. Key terms relating to the payment of attorneys’ fees are as
14 follows:

- 15 • Claimants and Defendant agree that the Action shall be ended, settled,
16 resolved, and concluded by agreement of Defendant to pay a total
17 amount not to exceed \$17,448,500;
- 18 • Claimants’ counsel shall be reimbursed Case Costs advanced and
19 incurred from the Settlement Fund of \$1,100,000;
- 20 • Claimants’ Counsel will be paid attorneys’ fees from the Settlement
21 Fund equal to one-third (1/3) of the Maximum Settlement Sum, less
22 Case Costs. That is, 1/3 of the amount remaining after Case Costs are
23 deducted from the Settlement Sum. Consequently, the calculation of
24 attorneys’ fees shall be as follows: (1) subtraction of the Case Costs
25 from the Settlement Sum, (2) dividing the remaining amount by 3. As
26 an example, if the Settlement Sum is \$17,448,500.00, and Case Costs
27

28 ³ There were two prior unsuccessful mediation sessions.

are \$1,100,000.00, the attorneys' fees would be \$5,449,500.00 pursuant to the following calculation:

$\$17,448,500.00 - \$1,100,000.00 \text{ Case Costs} = \$16,348,500.00$

$\$16,348,500.00 / 3 = \$5,449,500 \text{ in Attorneys' Fees}$

Doc 562(Declaration of Richard E. Donahoo in Support of Motion for Preliminary Approval, Exhibit A).

Here, the actual costs are \$1,009,469, below the agreed upon \$1,100,000. Foley ¶9; Donahoo, ¶40. Thus, the attorneys' fees are calculated as follows: (1) subtraction of the Case Costs from the \$17,448,500 Maximum Settlement Sum, (2) dividing the remaining amount by 3. The attorneys' fees are therefore \$5,479,677 pursuant to the following calculation:

$\$17,448,500 - \$1,009,469 \text{ Case Costs} = \$16,439,031.$

$\$16,439,031 / 3 = \$5,479,677 \text{ in Attorneys' Fees.}$

4. Additional Facts Pertaining to the Attorneys fees and costs.

Included in the Notice to the Claimants, Claimants were informed of the global settlement amount as well as the amount that counsel was seeking in fees set forth as follows:

THE PROPOSED SETTLEMENT

The Settlement provides that Defendants will pay up to Seventeen Million Four Hundred Forty-Eight Thousand Five Hundred (\$17,448,500) (the "Maximum Settlement Amount") to fully resolve the issues in the Lawsuits and Arbitrations, inclusive of attorneys' fees and costs. After any and all Court-approved deductions are made (as described below), the remaining amount (the "Net Settlement Amount") will be distributed amongst the eligible former *Beauperthuy* claimants who timely filed valid Individual Release Forms ("Qualified Claimants") pursuant to the Court-approved Plan of Allocation and Distribution as calculated by the Court-Approved Claims Administrator, Simpluris, as described below. Deducted from the Maximum Settlement Amount will be up to approximately \$1,100,000 in costs already expended and/or incurred by your Counsel of Record

1 and attorneys' fees equal to up to one-third (1/3) of the Maximum
2 Settlement Amount, less Case Costs, as approved by the Court.

3 Thus, each Claimant was informed that counsel would seek attorneys' fees
4 equal to 1/3rd of the net settlement funds. In the end, of the 862 potentially eligible
5 claimants, Simpluris received 849 timely and signed Individual Release
6 Agreements, representing a 98.49% approval by the Claimants. Tittle, ¶11. There
7 were 12 Claimants who did not respond. Simpluris received just one Notice of
8 Rejection, and no objections to the proposed settlement. Tittle, ¶¶12-13. This
9 means that over 99.99% of the settlement funds are available for distribution to the
10 Settling Claimants and their counsel, with only less than .002% of the \$17,448,500
11 reverting back to Defendants. Moreover, the 13 Claimants who did not respond or
12 rejected the settlement do not suffer any impairment to their rights to proceed.

13 That there was only one rejection and no objections to the settlement
14 including the fees and costs portion is significant and represents overwhelming
15 approval.

16 Moreover, the formula setting attorneys' fees in the global settlement
17 agreement mirrors the terms of the individual retainer agreement that over 95% of
18 the Claimants have signed. Foley, ¶23. Counsel has individual signed retainer
19 agreements with over 95% of the Settling Claimants; each provides for the same
20 formula for recovery of attorneys' fees. *Id.* Specifically, the retainer agreements
21 provide that counsel shall be entitled to receive 1/3rd of any recovery after a
22 reduction for costs and expenses. *Id.* As explained below, this fact, as well as the
23 other factors, strongly weighs in favor of granting the requested fees.

24 In sum, this was a contentiously litigated case. In addition to over
25 \$6,500,000 in professional time, Claimants' counsel incurred and paid
26 approximately \$1,000,000 in total costs and expenses. Foley, ¶9. In total and
27 individually, Claimants' counsels' requests are moderate, and represent a *reduction*
28 in the amount of time spent and an almost \$100,000 savings on costs and expenses

1 incurred.

2 Specifically, Claimants' counsel have submitted herewith declarations
3 evidencing the number of hours spent by each professional, their hourly rate and
4 their qualifications and experience. Foley, ¶¶3, 13-22; Donahoo, ¶ 16, Exh. A;
5 Karczag, ¶18. Utilizing that time and the reasonable hourly rates, the amount
6 totals \$6,591,771 (\$3,513,516FBBC + \$3,078,255D&A). This is \$1,112,094 more
7 than the \$5,479,677 requested in this motion. In addition, Claimants' counsel have
8 submitted a costs breakdown showing the amount of costs and expenses in each
9 category and providing detailed backup for categories where the payees exceeded
10 \$50,000 to a payee. Foley, ¶ 4-9, Exhs. A, B, C, D and E; Donahoo Decl., ¶17,
11 Exhs. B and C. Those costs total \$1,009,469. This is \$90,530 less than the
12 allowed costs set forth in the settlement agreement.

13 Finally, Simpluris has submitted a declaration attesting that \$65,000 was
14 incurred in settlement administration costs (this includes not only the initial notice
15 mailings but also applying and then recalibrating the settlement matrix, the follow
16 up work on tracking down Claimants who did not advise Counsel of their changed
17 street addresses or email addresses, and the calculation on a state by state basis of
18 taxes that need to be retained and tax forms that must be filed for each of the 849
19 Settling Claimants). Tittle, ¶16.

20 **5. Argument: The Court Should Grant the Requested Fees and Costs.**

21 Courts have recognized the "common fund" or "common benefit" doctrine,
22 under which attorneys who create a common fund or benefit for a group of persons
23 may be awarded their fees and costs to be paid out of the fund. *See Hanlon v.*
24 *Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) ("[A] lawyer who recovers a
25 common fund for the benefit of persons other than himself or his client is entitled
26 to a reasonable attorney's fee from the fund as a whole."); *see Staton v. Boeing*
27 *Co.*, 327 F.3d at 938, 967 (9th Cir. 2003) (quoting *Boeing Co. v. Van Gemert*, 444
28 U.S. 472, 478 (1980)). Awarding a percentage of the common fund is particularly

1 appropriate “when each member of a certified class has an undisputed and
2 mathematically ascertainable claim to part of a lump-sum judgment recovered on
3 his behalf.” *Id.* at 972 (quoting *Van Gemert*, 444 U.S. at 479) (internal quotation
4 marks omitted).

5 Although we are not dealing with a certified class here, the fact is that
6 Defendants’ offer was a global offer to all qualifying Claimants, which created the
7 settlement fund. Here, where the Settlement applies a distribution formula
8 pursuant to which each qualifying Claimant who affirmatively accepts the
9 settlement via returning their executed IRA, receives a mathematically
10 ascertainable payment. Under these circumstances, application of the percentage
11 of common fund doctrine for payment of attorneys’ fees is particularly appropriate.
12 The typical range of acceptable attorneys’ fees in the Ninth Circuit is 20 percent to
13 33.3 percent of the total settlement value, with 25 percent considered a benchmark
14 percentage. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). The exact
15 percentage awarded, however, varies depending on the facts of the case, and “in
16 most common fund cases, the award exceeds the benchmark” percentage. *Knight*
17 *v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, at *17 (N.D. Cal. Feb. 2,
18 2009); *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal.
19 1989) (“nearly all common fund awards range around 30%”). Here, although the
20 attorneys’ fees sought are described as 1/3rd, in fact, that one third is calculated
21 **after** a deduction of costs. If the costs are added back in the amount is actually
22 31.5% of the “total gross settlement value”. *See Knight*, 2009 U.S. Dist. LEXIS
23 11149 at *17 (noting that nearly all common fund awards range around 30% and
24 that a court has approved an attorneys’ fee award that was 33% of the settlement
25 fund in a wage-and-hour case), citing *Romero v. Producers Dairy Foods, Inc.*,
26 2007 U.S. Dist. LEXIS 86270, at *4 (E.D. Cal. Nov. 14, 2007).

27 The attorneys’ fees here should be awarded pursuant to federal law since the
28 case is based on federal question under the FLSA. Federal courts utilize the

percentage-of-the-fund approach, and use the lodestar as a “cross-check” on reasonableness of the percentage. As such, calculation of the lodestar amount may be used as a cross-check to assess the reasonableness of the percentage award. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *8 (E.D. Cal Oct. 13, 2012); *Bond v. Ferguson Enters.*, 2011 U.S. Dist. LEXIS 70390 (E.D. Cal. June 30, 2011)⁵; *Fernandez v. Vict. Secret Stores, LLC*, 2008 U.S. Dist. LEXIS 123546 (C.D. Cal. July 21, 2008).

A. The Standard – Common Fund

In assessing whether the percentage requested is fair and reasonable, courts generally consider the following factors: (1) the results achieved; (2) the risk of litigation; (3) the skill required; (4) the quality of work performed; (5) the contingent nature of the fee and the financial burden; and (6) the awards made in similar cases. *Vizcaino*, 290 F.3d at 1048-50; *Six (6) Mexican Workers v. Az. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990).

(1). The Results Achieved

The individual claims in this case concern Defendants’ alleged failure to pay overtime and to pay Claimants for work off the clock. Donahoo ¶ 41. 24 Hour attempted to divide these claims into individual arbitration cells that would have subjected the Claimants to varying standards of arbitrability and fairness that jeopardized their ability to bring and recover on their claims. For example, Defendants attempted to make the employees pay for half of the costs of the arbitration. The arbitrators’ fees were between \$30,000-50,000. *Id.* Thus, the costs of arbitration itself could have stripped the Claimants of their ability to pursue their claims. *Id.* In addition, because the case had been litigated so extensively, the time and expenses of getting new counsel to come up to speed on the case would have prohibited individual Claimants from pursuing many individual cases. *Id.* And, the further time and expense of having existing counsel

1 arbitrate each individual claim would have resulted in awards being issued 10
2 years from now or more. *Id.* Moreover, despite Defendants' best efforts,
3 Claimants' counsel was able to maintain a core of 862 qualifying Claimants able to
4 continue pursuing their individual claims. *Id.* Finally, the overall net award to the
5 Settling Claimants is approximately \$11,000,000. *Id.* This is a substantial sum
6 when spread among less than 1,000 individuals (this means on average each
7 individual is entitled to, on average, a gross award of over \$20,000). Finally, it is
8 significant that there was no objection to the settlement amount or to the attorneys'
9 fees requested. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D.
10 523, 529 (C.D. Cal. 2004).

11 (2). The Risks Involved

12 There were significant risks involved in this litigation. Donahoo, ¶ 42;
13 Karczag, ¶15. Specifically, Defendants raised numerous defenses, many of which
14 were a complete defense, including statute of limitations (Managers and Trainers),
15 Administrative Exemption (Managers), Executive Exemption (Managers), the
16 Highly Compensated Exemption (Managers), and the Commission Based Sales
17 Exemption (Managers and Trainers). *Id.* Moreover, factual disputes concerning
18 the components of compensation meant that the Arbitrator could determine
19 damages and even liability on a piecemeal, pay-period-by-pay-period basis (e.g.,
20 the worker is 7(i) exempt for some pay periods but not others). *Id.* Finally, both
21 liability and damages were nearly entirely dependent on a battle of credibility
22 between the Defendants' witnesses and the Claimant's. *Id.* If Claimant did not
23 prevail, he or she would receive nothing. *Id.* But, there was more at stake.
24 Although counsel were advancing the costs of the litigation, for each arbitration,
25 each individual Claimant would need to secure a minimum of one week off of
26 work, and in many cases, arrange for child or family care—all of which are non-
27 recoverable costs. *Id.*

28 Further, these actions were taken on a contingency fee basis and, as such,

1 Counsel invested time, effort, and money with no guarantee of recovery. Karczag,
2 ¶15; Donahoo, ¶¶14, 44. In cases where recovery is uncertain, an award of one-
3 third of the common fund as attorneys' fees has been found to be appropriate. *See*
4 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000); *In re*
5 *Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *19 (C.D. Cal. June 10,
6 2005) (discussing Ninth Circuit cases awarded attorney fees of one-third of the
7 total recovery).

8 **(3). Skill Required and Quality of the Work Performed**

9 The case required specialized skills to litigate the legal theories relating to
10 wage and hour law, arbitration, and the class aspect of the case while it was
11 conditionally certified. Counsel are experienced trial attorneys, including in the
12 area of employment class litigation, arbitration enforceability, and wage and hour.
13 Donahoo ¶¶3-11; 18; Foley ¶13-22.

14 Moreover, this case was actively litigated and significant time was spent on
15 discovery. Donahoo, ¶ 43; Karczag, ¶¶ 4-12. *See generally Navarro v. Servisair*,
16 2010 U.S. Dist. LEXIS 41081, at *3 (N.D. Cal. Apr. 27, 2010) (finding proposed
17 award of 30 percent of settlement fund unjustifiably departed from benchmark due
18 in part to speed with which parties reached a settlement). Overall, the specialized
19 skill of Counsel in this area of the law was generally an asset to the Claimants and
20 the quality of work performed was good.

21 **(4). The Contingent Nature of the Representation**

22 Counsel litigated the case on a contingency fee basis, which necessarily
23 presented considerable risk. *See In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393,
24 396-98 (S.D.N.Y. 1999) ("No one expects a lawyer whose compensation is
25 contingent on the success of his services to charge, when successful, as little as he
26 would charge a client who in advance of the litigation has agreed to pay for his
27 services, regardless of success. Nor, particularly in complicated cases producing
28 large recoveries, is it just to make a fee dependent solely on the reasonable amount

1 of time expended.”). Counsel assumed a very real risk in taking this case on a
2 contingency basis, investing time, effort, and money in the action with no
3 guarantee of recovery. Donahoo, ¶44; Karczag, ¶15.

4 In considering both the contingent nature of the work performed by Counsel
5 as well as the risk involved in the costs advanced, these factors support the fee
6 award requested. *See Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553, 580
7 (2004) (“A contingent fee must be higher than a fee for the same legal services
8 paid as they are performed. The contingent fee compensates the lawyer not only
9 for the legal services he renders but for the loan of those services”) (internal
10 citations omitted).

11 (5). Awards Made in Similar Cases

12 Ninth Circuit District Courts, including the Northern District of California,
13 have made similar awards in similar cases. *See, e.g., Knight*, 2009 WL 248367, at
14 *17 (noting that nearly all common fund awards range around 30% and that a court
15 has approved an attorney’s fee award that was 33% of the settlement fund in a
16 wage-and-hour case), citing *Romero*, 2007 U.S. Dist. LEXIS 86270, at *4; *see*
17 *also In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1048 (N.D. Cal. 2008)
18 (awarding 28% attorney’s fees).⁴

19
20 ⁴ These are also comparable to other wage and hour cases in the Eastern District as well:
21 (1) *Garcia*, 2012 U.S. Dist. LEXIS 160052 (court approving attorneys' fees in the amount of 33
22 percent of the common fund);
23 (2) *Bond*, 2011 U.S. Dist. LEXIS 70390, at *40 (court approved attorneys' fees in the amount of
24 30 percent of the common fund);
25 (3) *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 492-93 (E.D. Cal. 2010) (wage-and-hour
26 action putative class-action settlement where court approved award of attorneys' fees in the
27 amount of 33.3 percent of the common fund);
28 (4) *Benitez, et al. v. Wilbur, et al.*, No. 1:08-cv-01122 LJO GSA, Doc. No. 52 (E.D. Cal., Dec.
15, 2009) (awarding 33.3 percent of the benefit to the class in attorneys' fees);
(5) *Chavez, et al. v. Petrissans*, Case No. 1:08-cv-00122 LJO GSA, Doc. No. 89 (E.D. Cal. Dec.
15, 2009) (court approved awards of attorneys' fees of 33.3 percent of the common fund);
(6) *Romero*, 2007 U.S. Dist. LEXIS 86270, at *4 (class-action settlement where court approved
attorneys' fees in the amount of 33 percent of common fund);

1 **(6). The Relevant Factors Weigh In Favor Of The Award.**

2 Further, although Counsel’s requested fees exceed the 25 percent benchmark
3 under federal law, the Court should find sufficient basis to exceed that marker
4 considering the risk of the litigation, the contingent nature of the work, the
5 favorable reaction of the Claimants to the settlement, and the fee awards in other
6 wage-and-hour cases. As such, the requested 31.5% of the overall recovery
7 represents a reasonable fee award and should be approved. *See Ozga v. U.S.*
8 *Remodelers, Inc.*, 2010 U.S. Dist. LEXIS 91196, at * 3 (N.D. Cal. Aug. 9, 2010)
9 (departure from benchmark warranted due to excellent results, reaction of the class,
10 and the risks faced due to the uncertainty of California law in similar wage-and-
11 hour cases).

12 **B. Lodestar Cross-check.**

13 Courts frequently cross-check a percentage fee request with the lodestar
14 analysis. *See, e.g., Vizcaino*, 290 F.3d at 1050 (finding that “the lodestar may
15 provide a useful perspective on the reasonableness of a given percentage award”);
16 *Bond*, 2011 U.S. Dist. LEXIS 70390, at *29 (finding that “[c]alculation of the
17 lodestar amount may be used as a cross-check to assess the reasonableness of the
18 percentage award”).

19 “In conducting a lodestar cross-check, the court must first determine the
20 dollar value of the proposed percentage-based fee award.” *In re Portal Software,*
21 *Inc. Sec. Litig. (“Portal Software”)*, 2007 U.S. Dist. LEXIS 88886, at *37 (N.D.

22
23 (7) *Vasquez v. Jim Aartman, Inc.*, No. 1:02-cv-05624-AWI-LJO, Doc. No. 130 (class-action
24 settlement where court approved attorneys' fees in the amount of 30 percent of the settlement
amount);

25 (8) *Baganha v. Cal. Milk Transp.*, No. 1:01-cv-05729-AWI-LJO, Doc. No. 147 (class-action
26 settlement where court approved attorneys' fees in the amount of 31.25 percent of settlement
amount); and

27 (9) *Randall Willis et al. v. Cal. Western Transp.* and *Earl Baron et al. v. Cal Western Transp.*
28 (consolidated cases), No. 1:00-cv-05695-AWI-LJO (court approved attorneys' fees in the amount
of 33.3 percent of the settlement amount).

1 Cal. Nov. 26, 2007). The requested award here is \$5,479,677, which represents a
2 requested fee of 33 1/3rd percent of the net settlement amount before costs and is
3 just 30% of the approximate \$17,448,500 in total benefits.

4 The next step is to cross-check the proposed percentage fee against the
5 lodestar. *Id.* “Three figures are salient in a lodestar calculation: (1) counsel’s
6 reasonable hours, (2) counsel’s reasonable hourly rate and (3) a multiplier thought
7 to compensate for various factors (including unusual skill or experience of counsel,
8 or the *ex ante* risk of nonrecovery in the litigation).” *In re HPL Techs., Inc., Secs.*
9 *Litig.*, 366 F. Supp. 2d 912, 919 (N.D. Cal. 2005). The multiplier is calculated from
10 the ratio of the proposed percentage fee to the computed lodestar fee and is
11 assessed for reasonableness. *Portal Software*, 2007 U.S. Dist. LEXIS 88886 at *38.
12 Where the lodestar method is used as a cross-check to the percentage method, it
13 can be performed with a less exhaustive cataloguing and review of counsel’s hours.
14 *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005) (“The
15 lodestar cross-check calculation need entail neither mathematical precision nor
16 bean-counting”); *see also In re Immune Response Sec. Litig.*, 497 F. Supp. 2d
17 1166, 1176 (S.D. Cal. 2007) (“Although counsel have not provided a detailed
18 cataloging of hours spent, the Court finds the information provided to be sufficient
19 for purposes of lodestar cross-check”).

20 **(1). Counsels’ Lodestar.**

21 Here, Counsels’ hourly rates exceed the amount requested, and total
22 \$6,591,771 vs. the amount requested \$5,479,677.

23 **(2). Hours Reasonably Expended.**

24 As set forth in the declarations of counsel for Claimants, the 19,804 hours
25 expended on the litigation (10,121FBBC + 9683D&A) is reasonable in light of the
26 legal issues and the extensive amount of discovery conducted, the number of
27 Claimants included in the Settlement, the mediation preparation required, motion
28 practice, the venue “war” waged by the original counsel for Defendants, and in the

1 instant settlement. Donahoo, ¶ 45; Karczag, ¶¶4-14; Foley, ¶3. This case was not
2 only litigated for over seven years, but devolved into hundreds of individual
3 actions spread across 21 different judicial districts. Over 1,000 employees were
4 individually interviewed and dozens of days of company and employee depositions
5 were conducted across the country. Donahoo, ¶ 45; Karczag, ¶¶4, 6. Defendants’
6 counsel for the bulk of the litigation, Littler Mendelson, is the largest wage and
7 hour defense law firm in the world, and they brought significant and substantial
8 resources to bear, resulting in the litigation of every single conceivable issue.
9 Donahoo, ¶45; Karczag, ¶3. The hours spent were reasonable considering that
10 Defendants placed significant hurdles in Claimants’ way and the unique posture of
11 this case.

12 (3). Reasonable Hourly Rates

13 Claimants’ counsel has submitted documentation of the hourly rates billed in
14 this matter. The rates range from \$100-\$175 for Case Administrators, Legal
15 Assistants and Paralegals, \$200-\$325 for associates, and \$400-\$600 for partners.
16 Foley, ¶3; Donahoo ¶16; Karczag, ¶18. Claimants’ counsel has also submitted a
17 declaration of an expert on attorneys’ fees, Richard M. Pearl, who conducted an
18 exhaustive survey on the issue of attorneys’ fees in a recent attorneys’ fees matter
19 decided in the Northern District of California, styled *Rosenfeld v. U.S. Dept of*
20 *Justice*, 904 F.Supp.2d 988 (N.D. Cal. 2012). Karczag, ¶16, Exh. A. In sum, all of
21 the evidence and reported opinions show that prevailing rates in the Northern
22 District of California are in the \$400-\$500 range, with rates of up to \$650-\$800
23 approved for partners and senior associates with significant years of experience;
24 for associates \$300-\$500 is the norm, and for Paralegals, Case Administrators, and
25 Legal Assistants the range is from \$150-\$275. *See e.g., Garcia*, 2012 U.S. Dist.
26 LEXIS 160052, at *9; *Californians for Disability Rights v. California Dept. of*
27 *Transp.*, 2010 WL 8746910 (N.D. Cal. Dec. 13, 2010) (report and recommendation
28 adopted *sub nom. Californians for Disability Rights, Inc. v. Cal. Dept. of Transp.*,

1 2011 WL 8180376 (N.D. Cal. Feb. 2, 2011) (awarding hourly rate of \$730 for
2 attorney with 26 years of experience); *Wren v. RGIS Inventory Specialists*, 2011
3 WL 1230826 (N.D. Cal. Apr. 1, 2011) *supplemented*, 2011 WL 1838562 (N.D.
4 Cal. May 13, 2011) (awarding hourly rate of \$650 for attorney with 17 years of
5 experience. All of the rates requested here are well below the average prevailing
6 rates in the Northern District of California for wage and hour litigation firms.
7 Karczag, ¶16-18, Exhs. A and B.

8 **C. Lodestar Multiplier**

9 Indeed, this case has been litigated for years and most Claimants are
10 receiving thousands of dollars in recovery. Claimants' counsel has overcome
11 every hurdle including a venue war spanning 21 judicial districts. Such
12 circumstances would ordinarily justify a multiplier increase in the fee award from
13 the lodestar. Nevertheless, as a consequence of the extensive litigation, this fee
14 award actually results in a payment of attorneys' fees that is *less* than the hourly
15 fees and represents a deduction to the lodestar. Courts often compare the fee
16 counsel seeks as a percentage with what their hourly bills would amount to under
17 lodestar. *See Vizcaino*, 290 F.3d at 1050-51 (providing "[c]alculation of the
18 lodestar, which measures the lawyers' investment of time in the litigation, provides
19 a check on the reasonableness of the percentage award"); *In re Omnivision Tech.*,
20 559 F.Supp.2d at 1048 (awarding 28% attorney's fees when the amount
21 represented a multiplier of approximately 1.33 times the lodestar); *see also Knight*,
22 2009 WL 248367, at *7 (awarding 30% when that amount represented 1.08 times
23 the lodestar).

24 Adjustments to increase or decrease the lodestar amount are sometimes
25 appropriate and justify the use of a "lodestar multiplier." *Clark v. City of Los*
26 *Angeles*, 803 F.2d 987, 991-92 (9th Cir. 1986); *see also Fischel v. Equitable Life*
27 *Assur. Soc'y of U.S.*, 307 F.3d 997, 1008 (9th Cir. 2002) (holding that "It is an
28 established practice in the private legal market to reward attorneys for taking the

1 risk of non-payment by paying them a premium over their normal hourly rates for
2 winning contingency cases”). (quoting *In re Wash. Pub. Power Supply Sys. Sec.*
3 *Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994)). Generally, a district court has
4 discretion to apply a multiplier to the attorneys’ fees calculation to compensate for
5 the risk of nonpayment. *Fischel*, 307 F.3d at 1008; *see also In re Coordinated*
6 *Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 609 (9th
7 Cir.1997).

8 The “lodestar multiplier” is calculated by dividing the percentage fee award
9 by the lodestar calculation. *Fischel*, 307 F.3d at 1008. \$6,591,771
10 (\$3,513,516FBBBC + \$3,078,255D&A). This is \$1,112,094 more than the
11 \$5,479,677 requested in this motion. Here, a multiplier of .83 is calculated by
12 dividing the amount requested \$5,479,677 by the amount actually incurred in hours
13 \$6,591.771. To determine whether the lodestar multiplier is reasonable the
14 following factors may be considered: (1) the amount involved and the results
15 obtained, (2) the novelty and difficulty of the questions involved, (3) the skill
16 requisite to perform the legal service properly, (4) the preclusion of other
17 employment by the attorney due to acceptance of the case, (5) the customary fee,
18 (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client
19 or the circumstances, (8) the amount involved and the results obtained, (9) the
20 experience, reputation, and ability of the attorneys, (10) the undesirability of the
21 case, (11) the nature and length of the professional relationship with the client, and
22 (12) awards in similar cases. *Id.* at 1007, n. 7 (citing *Quesada v. Thomason*, 850
23 F.2d 537, 539 n. 1 (9th Cir.1988)). Only the *Quesada* factors that are not already
24 subsumed within the lodestar are considered. *See Van Gerwen v. Guarantee Mut.*
25 *Life Co.*, 214 F.3d 1041, 1046-47 (9th Cir. 2000).

26 Here, the additional *Quesada* factors, to the extent they apply, arguably
27 apply to result in an upward adjustment or no adjustment at all. However, because
28 counsel in this case (in order to serve the best interests of finality and to allow their

1 clients to receive long overdue money promptly) voluntarily agreed to a reduction
2 by way of a lodestar analysis, there is no purpose served in conducting the
3 analysis.

4 Based on the overall success, the absence of opposition, and Claimants'
5 Counsels' well-documented hours worked in this action, Settling Claimants'
6 request is reasonable. *See, e.g., Vizcaino.*, 290 F.3d at 1051 (finding no abuse of
7 discretion in awarding a multiplier of 3.65); *see also Garcia*, 2012 U.S. Dist.
8 LEXIS 160052, at *30 (approving a multiplier of 1.28); *see also Bond*, 2011 U.S.
9 Dist. LEXIS 70390 at *36 (approving a multiplier of 1.75). According, the Court
10 should approve the request for attorneys' fees in the total amount of \$5,479,677.

11 **D. Claimants' Request for Costs and Expenses Should**
12 **Be Granted**

13 The request for reimbursement of \$1,009,469 in costs is reasonable given the
14 complexity and scope of this case and represents a deduction in the actual amount
15 of costs incurred. The declarations of Claimants' Counsel detail the costs incurred
16 which include expert fees, travel costs, mediator fees, expert fees, copy and
17 scanning costs, filing fees, and electronic research fees. These types of fees are
18 routinely reimbursed. *See, e.g., Vasquez*, 266 F.R.D. at 493. The actual amount of
19 costs incurred total \$1,009,469. *Foley*, ¶9; *Donahoo*, ¶40.

20 Here, Claimants engaged both liability and damage experts who undertook
21 extensive consultation and analysis, including preparing for and attending
22 depositions. *Foley*, ¶7; *Donahoo*, ¶40. Claimants' damages expert, Malcolm
23 Cohen, Phd. is a nationally recognized FLSA expert who prepared an extensive
24 damage analysis for each of the Claimants and who testified regarding the
25 extensive analysis undertaken. *Id.* Claimants' expert William Cutler is likewise a
26 nationally recognized wage and hour expert and former compliance investigator
27 with the Department of Labor. Claimants' expert witness and consultant fees
28 totaled over \$416,509. *Id.*

1 Claimants' additional costs included four days of mediation with Mark
2 Rudy, Esq. a nationally recognized mediator with extensive experience in labor
3 and employment matter. Foley, ¶5; Donahoo, ¶40. Claimants paid \$55,907.50 in
4 fees to the Special Master appointed by the Court at the request of both parties and
5 the Mediator whose participation ultimately led to the settlement of this case.
6 Donahoo, ¶40; Foley, Exh. A.

7 The requested and agreed-upon administrative fee for the Settlement
8 Administrator, in the amount of \$65,000, is likewise reasonable. Given the
9 required administrative duties and responsibilities and work provided, which
10 included providing individualized notice to each of the 862 Claimants, and the
11 computation, calculation, and processing of final payments to account for all
12 required tax forms for this wage and hour case, the requested and agreed-upon
13 payment to the Settlement Administrator, Simpluris, also is reasonable. As set
14 forth in the declaration of Simpluris Administrator Krista Tittle, Simpluris has
15 completed its assignment to date and will complete its remaining work.

16 **6. Conclusion.**

17 For the foregoing reasons, Settling Claimants respectfully request that this
18 Court issue an order Granting the requested award of Attorneys' Fees and Costs in
19 the amount of \$5,479,677 in attorneys' fees, \$1,009,469 in costs and expenses to
20 Counsel, plus \$65,000 in Settlement Administration Costs to Simpluris.

21
22 Dated: August 9, 2013

DONAHOO & ASSOCIATES
FOLEY BEZEK BEHLE & CURTIS, LLP

24 By: /s/ Richard E. Donahoo
25 Thomas G. Foley, Jr.
26 Richard E. Donahoo
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